

**Senate File 2169 - Introduced**

SENATE FILE 2169  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3143)

**A BILL FOR**

1 An Act relating to wills including witness testimony,  
2 distribution of property, and claims of personal  
3 representatives, and including retroactive and other  
4 applicability provisions.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 633.295, Code 2014, is amended to read  
2 as follows:

3 **633.295 Testimony of witnesses.**

4 The proof may be made by the oral or written testimony of  
5 one or more of the subscribing witnesses to the will. If such  
6 testimony is in writing, it shall be substantially in the  
7 following form executed and sworn to before or after the death  
8 of the decedent:

9 In the District Court of Iowa

10 In and for ..... County

11 In the Matter of the Estate of .....

12 ....., Deceased

13 Probate No. ....

14 Testimony of Subscribing

15 Witness on Probate of Will.

16 State of ..... )

17 ..... County ) ss

18 I, ....., being first duly sworn, state:

19 I reside in the County of ....., State of .....; I knew  
20 the identity of the testator on the .... day of ..... (month),  
21 ... (year), the date of the instrument, the original or exact  
22 reproduction of which is attached hereto, now shown to me,  
23 and purporting to be the last will and testament of the said  
24 ~~....., deceased~~; I am one of the subscribing witnesses  
25 to said instrument; at the said date of said instrument, I  
26 knew the identity of ....., the other subscribing witness;  
27 that said instrument was exhibited to me and to the other  
28 subscribing witness by the testator, who declared the same to  
29 be the testator's last will and testament, and was signed by  
30 the testator at ....., in the County of ....., State of  
31 ....., on the date shown in said instrument, in the presence  
32 of myself and the other subscribing witness; and the other  
33 subscribing witness and I then and there, at the request of the  
34 testator, in the presence of said testator and in the presence  
35 of each other, subscribed our names thereto as witnesses.

1 .....

2 Name of witness

3 .....

4 Address

5 Subscribed and sworn to before me this ... day of .....

6 (month), ... (year)

7

.....

8

Notary Public in and for

9 (Stamp)

the State of .....

10 Sec. 2. Section 633.356, Code 2014, is amended to read as  
11 follows:

12 **633.356 Distribution of property by affidavit.**

13 1. When the gross value of the decedent's personal property  
14 that would otherwise be distributed by will or intestate  
15 succession ~~does not exceed~~ is or has been, at any time since  
16 the decedent's death, twenty-five thousand dollars or less  
17 and there is no real property or the real property passes to  
18 persons exempt from inheritance tax ~~pursuant to section 450.9~~  
19 as joint tenants with ~~right~~ full rights of survivorship, and if  
20 forty days have elapsed since the death of the decedent, ~~the a~~  
21 ~~successor of the decedent~~ as defined in subsection 2 may, by  
22 ~~filing~~ furnishing an affidavit prepared pursuant to subsection  
23 3 or 8, and without procuring letters of appointment, do any of  
24 the following with respect to one or more ~~particular~~ items of  
25 such personal property:

26 a. Receive any ~~particular~~ item of tangible personal property  
27 of the decedent.

28 b. Have any evidence of a debt, obligation, interest,  
29 right, security, or chose in action belonging to the decedent  
30 transferred.

31 c. Collect the proceeds from any life insurance policy or  
32 any other item of property for which a beneficiary has not been  
33 designated.

34 2. "~~Successor of the decedent~~" means:

35 a. If the decedent died testate, the reasonably

1 ascertainable beneficiary or beneficiaries who succeeded to  
2 the ~~particular~~ item of property ~~of the decedent~~ under the  
3 decedent's will. For the purposes of this subsection the  
4 trustee of a trust created during the decedent's lifetime is a  
5 beneficiary under the decedent's will if the trust succeeds to  
6 the ~~particular item of~~ property under the decedent's will.

7     **b.** If the decedent died intestate, the reasonably  
8 ascertainable person or persons who succeeded to the ~~particular~~  
9 ~~item of~~ property ~~of the decedent~~ under the laws of intestate  
10 succession of this state.

11     **c.** If the decedent received medical assistance benefits from  
12 the state, the Iowa Medicaid agency that provided the benefits  
13 is a successor pursuant to subsection 8.

14     3. **a.** To collect money, receive tangible personal  
15 property, or have evidences of intangible personal property  
16 transferred under this ~~chapter~~ section, the a successor ~~of~~  
17 ~~the decedent~~ shall furnish to the holder of the decedent's  
18 property an affidavit under penalty of perjury stating all of  
19 the following:

20         (1) The decedent's name, social security number, and ~~the~~  
21 date and place of ~~the decedent's~~ death.

22         (2) That at least forty days have elapsed since the death  
23 of the decedent, as shown by an attached certified copy of the  
24 death certificate of the decedent.

25         (3) That the gross value of the decedent's personal property  
26 that would otherwise be distributed by will or intestate  
27 succession ~~does not exceed~~ is, or has been at any time since  
28 the decedent's death, twenty-five thousand dollars or less  
29 and there is no real property or the real property passes to  
30 persons exempt from inheritance tax ~~pursuant to section 450.9~~  
31 as joint tenants with ~~right~~ full rights of survivorship.

32         (4) A general description of the property of the decedent  
33 that is to be paid, transferred, or delivered to or for the  
34 benefit of each successor.

35         (5) The name, address, and ~~social security tax~~

1 ~~identification number of the successor of the decedent to the~~  
2 ~~described property and relationship to the decedent of each~~  
3 ~~successor, and whether the any successor is under a legal~~  
4 ~~disability.~~

5 (6) If applicable pursuant to subsection 2, paragraph "a",  
6 that the attached copy of the decedent's will is the last will  
7 of the decedent and has been ~~admitted to probate or otherwise~~  
8 ~~filed in~~ delivered to the office of a clerk of the district  
9 court in accordance with Iowa law.

10 (7) That no persons other than ~~those~~ the successors listed  
11 in the affidavit have a right to the interest of the decedent  
12 in the described property.

13 (8) That the affiant requests that the described property  
14 be paid, delivered, or transferred to ~~the successors of the~~  
15 ~~decedent to the described property or for the benefit of each~~  
16 successor.

17 (9) That the affiant affirms under penalty of perjury that  
18 the affidavit is true and correct.

19 ~~b. More than one person~~ If there are two or more successors,  
20 any of the successors may execute an affidavit under this  
21 subsection.

22 4. a. If the decedent had evidence of ownership of the  
23 property described in the affidavit and the holder of the  
24 property would have the right to require presentation of the  
25 evidence of ownership before the duty of the holder to pay,  
26 deliver, or transfer the property to the decedent would have  
27 arisen, the evidence of the ownership, if available, shall be  
28 presented with the affidavit to the holder of the decedent's  
29 property.

30 b. If the evidence of ownership is not presented to the  
31 holder of the property, the holder may require, as a condition  
32 for the payment, delivery, or transfer of the property, that  
33 the ~~successor~~ affiant provide the holder with a bond in a  
34 reasonable amount determined by the holder to be sufficient to  
35 indemnify the holder against all liability, claims, demands,

1 loss, damages, costs, and expenses that the holder may incur  
 2 or suffer by reason of the payment, delivery, or transfer of  
 3 the property. This subsection does not preclude the holder  
 4 and the ~~successor~~ affiant from dispensing with the requirement  
 5 that a bond be provided, and instead entering into an agreement  
 6 satisfactory to the holder concerning the duty of the ~~successor~~  
 7 affiant to indemnify the holder.

8     c. Judgments rendered by any court in this state and  
 9 mortgages belonging to a decedent whose personal property is  
 10 being distributed pursuant to this section may, without prior  
 11 order of court, be released, discharged, or assigned, in whole  
 12 or in part, as to any ~~particular~~ property, and deeds may be  
 13 executed in performance of real estate contracts entered into  
 14 by the decedent, where an affidavit made pursuant to subsection  
 15 3 or 8 is filed in the office of the county recorder of the  
 16 county wherein any judgment, mortgage, or real estate contract  
 17 appears of record.

18     5. Reasonable proof of the identity of each successor ~~of the~~  
 19 ~~decedent~~ seeking distribution by virtue of the affidavit shall  
 20 be provided to the satisfaction of the holder of the decedent's  
 21 property.

22     6. a. If the requirements of this section are satisfied:

23         (1) The property described in the affidavit shall be paid,  
 24 delivered, or transferred to ~~the~~ or for the benefit of each  
 25 ~~successor of the decedent's interest in the property.~~

26         (2) A transfer agent of a security described in the  
 27 affidavit shall change registered ownership on the books of  
 28 the corporation from the decedent to ~~the person listed on the~~  
 29 ~~affidavit as the~~ or for the benefit of each ~~successor of the~~  
 30 ~~decedent's interest.~~

31         (3) The holder of the property may return the attached  
 32 certified copy of the decedent's death certificate to the  
 33 affiant.

34     b. If the holder of the decedent's property refuses to  
 35 pay, deliver, or transfer any property or evidence thereof to

1 or for the benefit of the successor of the decedent within a  
 2 reasonable time, ~~the~~ a successor may recover the property or  
 3 compel its payment, delivery, or transfer in an action brought  
 4 for that purpose against the holder of the property. If an  
 5 action is brought against the holder under this subsection,  
 6 the court shall award ~~attorney's~~ attorney fees to the person  
 7 bringing the action if the court finds that the holder of the  
 8 decedent's property acted unreasonably in refusing to pay,  
 9 deliver, or transfer the property to or for the person benefit  
 10 of the successor as required by this subsection.

11 7. a. If the requirements of this section are satisfied,  
 12 receipt by the holder of the decedent's property of the  
 13 affidavit under subsection 3 or 8 constitutes sufficient  
 14 acquittance for the payment of money, delivery of property, or  
 15 transferring the registered ownership of property pursuant to  
 16 this ~~chapter~~ section and discharges the holder from any further  
 17 liability with respect to the money or property. The holder  
 18 may rely in good faith on the statements in the affidavit and  
 19 has no duty to inquire into the truth of any statement in the  
 20 affidavit.

21 b. If the requirements of this section are satisfied, the  
 22 holder is not liable for any debt owed by the decedent by  
 23 reason of paying money, delivering property, or transferring  
 24 registered ownership of property pursuant to this ~~chapter~~  
 25 section. If an action is brought against the holder under this  
 26 section, the court shall award attorney fees to the holder if  
 27 the court finds that the holder acted reasonably in paying,  
 28 delivering, or transferring the property as required by this  
 29 section.

30 8. a. ~~When a deceased distributee is entitled to money~~  
 31 ~~or property claimed in an affidavit presented under this~~  
 32 ~~section with respect to a deceased person whose estate is~~  
 33 ~~being administered in this state, the personal representative~~  
 34 ~~of the person whose estate is being administered shall~~  
 35 ~~present the affidavit to the court in which the estate is~~

1 ~~being administered. The court shall direct the personal~~  
 2 ~~representative to pay the money or deliver the property to the~~  
 3 ~~person identified by the affidavit as the successor of the~~  
 4 ~~deceased distributee to the extent that the court determines~~  
 5 ~~that the deceased distributee was entitled to the money or~~  
 6 ~~property under the will or the laws of intestate succession.~~  
 7 If an affidavit, executed under this section for a deceased  
 8 distributee of an estate being administered in this state, is  
 9 filed with the clerk of the district court in which the estate  
 10 is being administered, the court shall direct the personal  
 11 representative to pay the money or deliver the property to  
 12 or for the benefit of each successor to the extent the court  
 13 determines that the deceased distributee would have been  
 14 entitled to money or property of the estate.

15     b. When the department of human services is entitled to  
 16 money or property of a decedent pursuant to section 249A.53,  
 17 subsection 2, and no affidavit has been presented by a  
 18 ~~successor of the decedent~~ as defined in subsection 2, paragraph  
 19 "a" or "b", within ninety days of the date of the decedent's  
 20 death, the funds in the account or other property, up to the  
 21 amount of the claim of the department, shall be paid to the  
 22 department upon presentation by the department or an entity  
 23 designated by the department of an affidavit to the holder  
 24 of the decedent's property. Such affidavit shall include  
 25 the information specified in subsection 3, except that the  
 26 department may submit proof of payment of funeral expenses as  
 27 verification of the decedent's death instead of a certified  
 28 copy of the decedent's death certificate. The amount of the  
 29 department's claim shall also be included in the affidavit,  
 30 which shall entitle the department to receive the funds as  
 31 ~~a successor of the decedent.~~ The department shall issue a  
 32 refund within sixty days to any claimant with a superior  
 33 priority pursuant to section 633.425, if notice of such claim  
 34 is given to the department, or to the entity designated by  
 35 the department to receive notice, within one year of the



1 department's receipt of funds. This paragraph shall apply to  
2 funds or property of the decedent transferred to the custody  
3 of the treasurer of state as unclaimed property pursuant to  
4 chapter 556.

5 9. The procedure provided by this section may be used only  
6 if no administration of the decedent's estate is pending.

7 10. Upon receipt of an affidavit under subsection 3 and  
8 reasonable proof under subsection 5 of the identity of each  
9 successor seeking distribution by virtue of the affidavit, the  
10 holder of the property shall disclose to the affiant whether  
11 the value of the property held by the holder is, or has been  
12 at any time since the decedent's death, twenty-five thousand  
13 dollars or less. An affidavit furnished for the purpose of  
14 determining whether the value of the property is, or has been  
15 at any time since the decedent's death, twenty-five thousand  
16 dollars or less need not contain the language required under  
17 subsection 3, paragraph "a", subparagraph (3), but shall state  
18 that the affiant reasonably believes that the gross value  
19 of the decedent's personal property that would otherwise be  
20 distributed by will or intestate succession is, or has been  
21 at any time since the decedent's death, twenty-five thousand  
22 dollars or less and there is no real property or the real  
23 property passes to persons exempt from inheritance tax as joint  
24 tenants with full rights of survivorship.

25 Sec. 3. Section 633.432, Code 2014, is amended to read as  
26 follows:

27 **633.432 Allowance or disallowance of claim of personal**  
28 **representative.**

29 1. The A temporary administrator appointed pursuant to  
30 section 633.431 shall, after upon investigation, file a report  
31 with the court recommending the allowance or disallowance  
32 of such a claim filed pursuant to section 633.431. The  
33 recommendation may, but need not, include information on the  
34 substantive merits of allowing or disallowing the claim.  
35 The recommendation shall include a statement that, upon

1 investigation, a legitimate dispute either does or does not  
2 exist as to such a claim.

3     2. Unless the court allows the claim, ~~it~~ the claim shall  
4 ~~then~~ be disposed of as a contested claim in accordance with the  
5 provisions of sections 633.439 to 633.448.

6     Sec. 4. 2013 Iowa Acts, chapter 33, section 9, is amended  
7 to read as follows:

8 SEC. 9. APPLICABILITY.

9        1. The sections of this Act amending sections 633.273A, and  
10 633.279, ~~and 633.295~~ apply to estates of decedents dying on or  
11 after July 1, 2013.

12     1A. The section of this Act amending section 633.295 applies  
13 to wills executed on or after July 1, 2013.

14       2. The sections of this Act amending sections 633.290 and  
15 635.1 apply to petitions filed on or after July 1, 2013.

16       3. The section of this Act amending section 633.575 applies  
17 to all judicial proceedings held on or after July 1, 2013, in  
18 which an order for the appointment of a conservatorship is  
19 sought or has been issued.

20       4. The section of this Act amending section 633A.4504  
21 applies retroactively to all reports and accountings provided  
22 by a trustee, unless an exception applies, to one year from  
23 July 1, 2000.

24       Sec. 5. APPLICABILITY. The section of this Act amending  
25 section 633.295 applies to wills executed on or after July 1,  
26 2014.

27       Sec. 6. RETROACTIVE APPLICABILITY. The section of this Act  
28 amending 2013 Iowa Acts, chapter 33, section 9, is applicable  
29 retroactively to July 1, 2013.

30	EXPLANATION
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31           The inclusion of this explanation does not constitute agreement with  
32           the explanation's substance by the members of the general assembly.

33 This bill relates to wills including witness testimony,  
34 distribution of property, and claims of personal  
35 representatives, and includes applicability provisions.

1     PROBATE OF WILLS — TESTIMONY OF WITNESSES TO WILL  
2 EXECUTION. The bill amends Code section 633.295 (affidavit  
3 form for written testimony by witnesses to a will) to allow  
4 execution of a self-proving will affidavit before or after the  
5 decedent's death and not just after the decedent's death. This  
6 amendment applies to wills executed on or after July 1, 2014.  
7     The bill also amends an applicability provision in 2013  
8 Iowa Acts, chapter 33, §9 (HF 591) to this same Code section  
9 providing that witnesses to a will need only know the identity  
10 of the testator and other witnesses. This amendment also  
11 applies retroactively to wills executed on or after July 1,  
12 2013, and not to estates of decedents dying on or after July 1,  
13 2013.

14     TITLE AND POSSESSION OF DECEDENT'S PROPERTY — DISTRIBUTION  
15 OF PROPERTY BY AFFIDAVIT. The bill amends Code section 633.356  
16 relating to the distribution of property by affidavit where  
17 the gross value of a decedent's personal property that would  
18 otherwise be distributed by will or intestate succession is  
19 \$25,000 or less and there is no real property or the property  
20 passes to persons exempt from inheritance tax as joint tenants  
21 with right of survivorship. In this situation currently, a  
22 successor of the decedent may, by filing an affidavit, receive  
23 any particular item of tangible personal property of the  
24 decedent, have any evidence of a debt, obligation, interest,  
25 right, security, or chose in action belonging to the decedent  
26 transferred, and collect the proceeds from any life insurance  
27 policy or any other item of property for which a beneficiary  
28 has not been designated.

29     The amendments to this section specify this Code section  
30 is applicable when the gross value of the decedent's personal  
31 property is, or has been at any time since the decedent's  
32 death, \$25,000 or less and there is no personal property or  
33 the property passes to persons exempt from inheritance tax  
34 as joint tenants with full rights of survivorship; define a  
35 successor to include a reasonably ascertainable beneficiary

1 if decedent died testate (with a will), or a reasonably  
2 ascertainable person if decedent died intestate (without  
3 a will), or an Iowa Medicaid agency that provided medical  
4 assistance benefits to the decedent; amend certain requirements  
5 relating to information contained in the affidavit to include  
6 all of the following: a general rather than a particular  
7 description of the decedent's property, a successor's tax  
8 identification number rather than social security number, and  
9 the relationship of each successor to the decedent, that a  
10 copy of the decedent's will if applicable has been delivered  
11 to the clerk of the district court, that the affiant (person  
12 making and signing the affidavit) has requested that the  
13 appropriate property be paid, delivered, or transferred to or  
14 for the benefit of each successor; that when there are two or  
15 more successors only one of the successors is required to sign  
16 the affidavit; that the holder of the property (person having  
17 possession, custody, or control of another's property) may  
18 return a certified copy of the decedent's death certificate  
19 to the affiant; that attorney fees may be awarded to a holder  
20 if the court finds the holder acted reasonably in paying,  
21 delivering, or transferring the requisite property; that when  
22 an affidavit is filed with the clerk of the district court in  
23 which the estate is being administered, the court shall direct  
24 the personal representative to pay the money or deliver the  
25 property to or for the benefit of each successor to the extent  
26 the court determines that the deceased distributee would have  
27 been entitled to money or property of the estate; and that  
28 an affidavit can be used to ascertain whether the value of a  
29 decedent's property exceeds the statutory \$25,000 limit.

30 CLASSIFICATION, ALLOWANCE, AND PAYMENT OF DEBTS AND  
31 CHARGES — TEMPORARY ADMINISTRATOR REPORT. The bill  
32 amends Code section 633.432 relating to the allowance or  
33 disallowance of a personal representative's claim (where  
34 the personal representative is a creditor of the decedent)  
35 against a decedent's estate and the contents of a temporary

1 administrator's report to the court. The bill allows a  
2 temporary administrator to limit the administrator's report  
3 to a recommendation allowing or disallowing the claim by a  
4 statement that, upon investigation, a legitimate dispute either  
5 does or does not exist as to such a claim.